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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1150

CITY OF PHILADELPHIA, ET AL.

v.

NEW JERSEY, ET AL.

On Appeal from the Supreme Court of the State of New Jersey

MOTION AND BRIEF FOR AMICUS CURIAE, AMERICAN SOCIETY OF CIVIL ENGINEERS

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MOTION OF THE AMERICAN SOCIETY OF CIVIL ENGINEERS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The American Society of Civil Engineers (hereinafter "ASCE") respectfully moves, pursuant to Rule 42.3 of this Court, for leave to file the accompanying Brief as Amicus Curiae on the merits of this case. Although the attorneys for Petitioners have consented to the amicus filing of a brief amicus curiae, the amicus has been advised that the Respondent will not grant its consent.

The American Society of Civil Engineers (ASCE) is a non-profit corporation registered in the State of New York. Its membership consists of more than 72,000 individual civil engineers and other qualified individuals. The objective of the Society, as stated in its Constitution, is the advancement of the science and profession of engineering to enhance the welfare of mankind.

An important concern of the Society is to promote sound engineering thought and practice in the solution of problems of environmental sanitation including the proper disposal of or recycling of solid wastes, the control of pollution, and the social and environmental impact of solutions to these engineering problems.

ASCE has a responsibility to represent its members in important public policy matters significantly affecting the foregoing interests. The question before this court, that of the constitutionality of excluding out-of-state solid waste from deposit within landfills of New Jersey, is of particular concern to ASCE. This is because the Society believes that the Court's decision may have an impact on environmental and pollution issues beyond this particular case and, more significantly, may affect others than the parties to the case. Accordingly, the ASCE focus of interest is upon these aspects of the questions involved.

It should be noted, also, that the ASCE perspective on the issues is different from that of the parties to the case. The viewpoint is that of the practicing civil engineer. The engineer believes that the complex ecosystem which provides mans' life sustaining environment, and the pollution problems associated therewith, know no political boundaries. These problems, therefore, are ill suited for unilateral solutions. In the words of Justice Cardoza, "the peoples of the several states must sink or swim together."

The Society believes that the import ban imposed by the New Jersey Waste Control Act is unsound from an engineering and professional point of view, and, moreover, is unconstitutional.

The situation, unfortunately, is not helped by the provisions of the Pennsylvania Solid Waste Management Act regarding the review authority of counties over the solid waste management plans of municipalities within the state. The primary emphasis in the Pennsylvania law is on a state-wide plan. The law, further, contains retaliatory authority directed at the states which do not accept solid waste from Pennsylvania. (This latter proviso was enacted in 1974 in response to the New Jersey Act.) Further, the fact that the population density of New Jersey is 953.1 persons per square mile compared to 262.3 per square mile in Pennsylvania (381.3 persons per square mile in New York) does not make it easy to deal with the people aspect of the problem. (1970 census data, 1973 World Almanac, 144) But the foregoing has no bearing on the constitutionality of the New Jersey statute, even though it does have much to do with New Jersey's understandable concern in seeking to preserve its scarce landfill areas.

What is important, however, is that the concept of areawide solutions to environmental problems has been embraced by the federal government in the air pollution/water pollution control programs and in the solid waste management field. In the long run, this public policy should work to provide optimum solutions for the good of all states and all citizens.

It is axiomatic that environmentally sound solutions to the solid waste management problem must be based on engineering considerations and their assessment by skilled professionals. The problem is sufficiently complex from the engineering standpoint alone, without the imposition of artificial, environmentally unsound political constraints. The nation cannot afford this kind of parochialism with its resulting inefficiency. It would reverse the progress made so far in the management of solid wastes and could have far reaching implications, as well, in matters relating to energy issues.

While the immediate problem is Philadelphia's, and Pennsylvania's, the precedent established would spread rapidly across the country. Regional solid waste management systems are already operating and many more are in various stages of planning and development throughout the nation. These regional systems and plans, in being and projected, are environmentally sound and cost-effective. Such regional solutions would be jeopardized or rendered useless if the New Jersey precedent is allowed to become widespread. Already six other states—Maine, Massachusetts, New Hampshire, Pennsylvania, Rhode Island and Vermont prohibit, to varying degrees, the disposal of out-of-state solid waste. Delaware, Illinois and Louisiana allow disposal of solid waste from out-of-state, but with certain limitations. It would appear that a Federal policy of primary state responsibility over the environment, coupled with provisions for areawide planning to make such responsibility meaningful in each state, is in jeopardy.

Because of the importance of the issues involved, ASCE desires to present to this Court, for its assist-

ance, the Society's views in regard to the significant questions involved in this proceeding.

WHEREFORE, the American Society of Civil Engineers respectfully requests this Court to grant this motion and permit the Society to file the Brief Amicus Curiae attached hereto and submitted herewith.

Respectfully submitted,

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May 28, 1976

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BRIEF FOR AMICUS CURIAE, AMERICAN SOCIETY OF CIVIL ENGINEERS

PRELIMINARY STATEMENT

The American Society of Civil Engineers (hereinafter "ASCE") respectfully requests this Court to permit the filing of the Brief Amicus Curiae attached hereto and submitted herewith.

STATEMENT OF THE CASE

New Jersey's Waste Control Act prohibits the disposal within the state of solid waste originating or collected outside the state's territorial borders without a like prohibition against New Jersey solid waste. Two state trial courts have held the prohibition unconstitu-

tional, in violation of the Commerce Clause, Article I, paragraph 8, clause 3, of the United States Constitution, in that it is an unreasonable discrimination against interstate commerce to the extent it would prohibit deposit in sanitary landfills within New Jersey of wastes originating outside of the state, but permit such deposit for wastes originating within the state. The New Jersey Supreme Court held that the Act does not violate the Commerce Clause and that the ban is a reasonable means to accomplish a legitimate goal of preserving New Jersey land. The Court further held that there has been no discrimination, at least in the economic sense. The City of Philadelphia seeks review of this final judgment, dealing solely with the federal constitutional question. Justice Brennan has ordered the judgment of the Supreme Court of New Jersey stayed, pending the timely filing of a notice of appeal, the timely docketing of the appeal, and action by the Supreme Court on the jurisdictional statement. It is to be noted that, by letter dated December 22, 1975 to Associate Justice William J. Brennan, Jr. the American Society of Civil Engineers supported the issuance of this stay. In April the Supreme Court noted jurisdiction.

INTEREST OF AMICUS CURIAE

As set forth in the motion for leave to file this brief, and as restated herein, the American Society of Civil Engineers and its members have a significant concern for insuring that the Commerce Clause guarantee against unreasonable discrimination against interstate commerce shall be upheld and that expressed federal policy encouraging cooperative solutions, to environmental problems, at the state and local level by states' exercise of authority shall not be frustrated.

The American Society of Civil Engineers (ASCE) is a non-profit corporation registered in the State of New York. Its membership consists of more than 72,000 individual civil engineers and other qualified individuals. The objective of the Society, as stated in its Constitution, is the advancement of the science and profession of engineering to enhance the welfare of mankind.

An important concern of the Society is to promote sound engineering thought and practice in the solution of problems of environmental sanitation, including the proper disposal or recycling of solid wastes, the control of pollution, and the social and environmental impact of solutions to these engineering problems.

ASCE has a responsibility to represent its members in important public policy matters significantly affecting the foregoing interests. The question before this Court of the constitutionality of excluding out-of-state solid waste from deposit within landfills in New Jersey is of particular concern to ASCE because the Society believes that the Court's decision may have an impact on environmental and pollution issues beyond this particular case, may affect others than the parties to the case, and may have implications with reference to energy issues as well. The ASCE focus of interest is upon these aspects of the questions involved.

It should be noted, also, that the perspective on the issues is different from that of the parties to the case. The viewpoint is that of the practicing civil engineer. It is the engineering view that mans' life-sustaining environment, and pollution problems associated therewith, know no political boundaries. These problems, therefore, are ill adapted to unilateral solutions. In

the words of Justice Cardoza, "the peoples of the several states must sink or swim together."

Hence, the decision in this case will affect the values ASCE seeks to promote on behalf of its membership. Accordingly, the Society desires to present to this Court, for its assistance, ASCE views as to the issues involved in this proceeding.

SUMMARY OF THE ARGUMENT

I. It is well established that solid waste is a legitimate subject of trade or commerce and is, therefore, within the purview of the Commerce Clause. Solid waste management is an essential element in the production of goods that flow in interstate commerce. Interstate commerce includes more than transportation, it embraces all the component parts of commercial intercourse among states. Solid waste management is a field of engineering. Further, engineering is a profession, which in the broadest sense is a driving force of seminal character which forges that very foundation from which our commercial trade emanates.

II. State laws based on the exercise of the police power, whether for the purpose of conserving natural resources or of protecting the environment, may not stand if they unreasonably discriminate against interstate commerce. In this case, the New Jersey Waste Control Act is unconstitutional as representing such discrimination, to the extent that it would prohibit disposal of solid waste within New Jersey of solid waste originating outside of the state but permit such disposal of wastes originating within New Jersey.

III. Federal policy favors the states' exercise of their own authority over the environment, with provi-

sions for interstate cooperation. In this case, a state statute would operate to interfere with the possibility of cooperative efforts of other states who support a minimal Federal role. The effect would be, in the long term, to thwart the Federal policy of placing primary reliance on the states. Further the precedent set could have implications as to energy issues. Invalidation of the New Jersey legislation is required because the state's action is inconsistent with public policy as established by the Congress and is destructive of the interests of other states who abide by national public policy. These states recognize that the solid waste problem is a national environmental problem, having broad implications and that the possibility of interstate and regional solutions to the component parts of the problem should not be precluded.

ARGUMENT

I. The Commerce Clause[2] Issue: The management of solid waste is interstate commerce within the meaning of the Commerce Clause.

It is well established that solid waste is a legitimate subject of interstate commerce.

In *Hackensack Meadow. D. Commission* v. *Municipal San. L.A.*, 316 A.2d 711, 716, the trial judge noted that:

Waste "may be utilized for construction, landfill, recycling of paper, bottles and metals and production of electricity." Further, in *United States* v. *Pennsylvania Refuse Removal Association,* 242 F. Suppl. 794, 799 (E.D.Pa. 1965), 357 F.2d 806, 809 (3rd Cir.), cert. denied, 384 U.S. 961, aff'd, 16 L.Ed.2d 674 (1966),

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[2] U.S. Constitution, Article I, Sec. 8, Cl. 3 "The Congress shall have power . . . to regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes."

the service of transporting and disposing of solid waste was held to constitute interstate commerce. See also *United States* v. *Bishop Processing Co.*, 287 F.Suppl. 624, 631, 632 (D.C. Md. 1968). In addition, solid waste disposal has been held to be an essential part of the production of goods for commerce. See *Brennan* v. *Metropolitan Trash, Inc.*, 513 F.2d 1324, 1327 (1975), and cases cited therein.

The Supreme Court has pointed out that "interstate commerce includes more than transportation; it embraces all the component parts of commercial intercourse among states." *Foster-Fountain Packing Co.* v. *Haydel,* 278 U.S. 1, 10 (1928). In this case, the Court held that a state statute that operates directly to burden any of the essential elements of interstate commerce is invalid.

In *United States* v. *Pennsylvania Refuse Removal Association,* 242 F.Suppl. 794, 799 (1965), the Court emphasized that the real subject of "trade or commerce" was not the worthless garbage that was being transported but, rather, the valuable services.

In a functional sense, as a field of civil engineering, solid waste management must also be considered as interstate commerce. In this regard, the Court in *United States* v. *National Society of Professional Engineers,* 389 F. Suppl. 1193, 1199 (1974), characterized engineering as "an industry often organized on a local, regional, national or even international scale, controlling, guiding and shaping the pace and direction of the vast array of interstate transactions needed to carry out much of the nation's construction and manufacture. The record is impressive in demonstrating that the imprint of professional engineering upon interstate commerce is clear and unmistakable. It is a driving force of seminal character which continues to forge the very foundation from which our commercial trade emanates."

II. The New Jersey Waste Control Act would effect an improper discrimination against interstate commerce and is hence unconstitutional.

—Discrimination Issue

"The power of the national government over commerce with foreign nations and among the several states is broad and comprehensive. It reaches the interior of every State of the Union, so far as it may be necessary to protect the products of other States and countries from discrimination by reason of their foreign origin." *Guy* v. *Baltimore,* 100 U.S. 434, 443 (1879). In *Baldwin* v. *G.A.F. Seilig,* 294 U.S. 511, 522, the Court says, "It is the established doctrine of this court that a state may not in any form or under any guise, directly burden the prosecution of interstate business." *International Textbook Co.* v. *Pigg,* 217 U.S. 91, 112. The Court goes on to say, "It (the Constitution) was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not in division."

In *Hackensack Meadow. D. Com'n* v. *Municipal San. L.A.,* 316 A.2d 711, 719 the Court points to *West* v. *Kansas Natural Gas Co.,* 221 U.S. 229, 255 (1910), 31 S.Ct. 564, 571, 55 L.Ed. 716, 726 (1911), where "Oklahoma enacted a law which prevented a pipeline company from transporting natural gas outside the state." The purpose of the law was to conserve natural gas in the Oklahoma fields for consumption in the

state. In declaring the statute violative of the Commerce Clause, the U.S. Supreme Court commented,

> "... The Statute of Oklahoma recognizes it to be a subject of intrastate commerce, but seeks to prohibit it from being the subject of interstate commerce, and this is the purpose of its conservation. In other words, the purpose of its conservation is in a sense commercial—the business welfare of the State, as coal might be, or timber. Both of those products may be limited in amount, and the same consideration of the public welfare which would confine gas to the use of the inhabitants of a State would confine them to the inhabitants of the State. If the States have such power, a singular situation might result. Pennsylvania might keep its coal, the Northwest its timber, the mining States their minerals. And why may not the products of the field be brought within the principle? Thus enlarged, or without that enlargement, its influence on interstate commerce need not be pointed out. To what consequence does such power tend? If one State has it, all States have it; embargo may be retailiated by embargo, and commerce will be halted at state lines. And yet we have said that 'in matters of foreign and interstate commerce there are not state lines.' In such commerce, instead of the States, a new power appears and a new welfare—a welfare which transcends that of any State. But rather let us say it is constituted of the welfare of all of the States and that each State is made the greater by a division of its resources, natural and created, with every other State, and those of every other State with it. This was the purpose, as it is the result, of the interstate commerce clause of the Constitution of the United States. If there is to be a turning backward, it must be done by the authority of another instrumentality than a court." (31 S.Ct. 564, 571)

Importantly, implicit in *Guy* v. *Baltimore* and *West* v. *Kansas Natural Gas Co.* is the fact that the origin of the subject of interstate commerce is pertinent to the question of conformance with the Commerce Clause, not the residence of the owner or carrier.

The New Jersey Supreme Court therefore erred in holding that there has been no discrimination, at least in the economic sense, stating, "Nor is there any real or significant discrimination in favor of local collectors. Refuse amassed by them outside the State may not be brought into New Jersey. Conversely, residents of other states are free to collect and dump within the state." (*Hackensack Meadowlands Commission* v. *Municipal Authority,* 8 ERG 1447, 1456)

As cited in *Hackensack Meadow. D. Com'n.* v. *Municipal San.LA.,* 316 A.2d 711, 718, 719, "In *Pennsylvania* v. *West Virginia,* 262 U.S. 553, 598 43 S.Ct. 658, 665, 67 L.Ed. 1117, 1133 (1923), a West Virginia statute restricted the exportation of natural gas to ensure a sufficient supply for its own citizens. Although the Supreme Court recognized that 'the gas is a natural product of the state and has become a necessity therein, that the supply is waning and no longer sufficient to satisfy local needs and be used abroad, and that the act is therefore a legitimate measure of conservation in the interest of people of the state,' the statute had to fall because it interfered with interstate commerce."

"Because the national 'common market' which is intended by the Commerce Clause, does not absolutely prohibit state legislation in the area of commerce, a state may regulate in a constitutionally accepted manner. A state may not, however, give preferential treatment to in-state sources at the expense of out-of-

state sources." *American Can Co.* v. *Oregon Liquor Control Commission*, No. 75567 (Cir. Ct. Ore. Sept. 1, 1972) 2 ELR 20642, 20644.

Since importation of out-of-state solid waste is flatly prohibited in New Jersey, amicus believes that the New Jersey Supreme Court erred in holding the New Jersey statute non-discriminatory.

—Balancing Test

The New Jersey Supreme Court applied a balancing test to judge whether the burden imposed on interstate commerce by the state statute exceeds or outweighs the benefit accruing to the state. In *Pike* v. *Bruce Church Inc.*, 397 U.S. 137, 142 (1970), the Court had this to say with reference to such a test.

> "Although the criteria for determining the validity of State statutes affecting interstate commerce have been variously stated, the general rule that emerges can be phrased as follows: where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Huron Portland Cement Co.* v. *Detroit*, 362 U.S. 440, 443, (1959). If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will, of course, depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities."

Of course the New Jersey statute patently discriminates against out-of-state solid waste and accordingly, based upon the guidelines outlined in the foregoing paragraph relating to evenhanded regulations, amicus

believes the balancing test to be an improper one to use in this case.

By way of further discussion of this point, it should be noted that the Supreme Court has recognized that the protection of public health through the preservation of the environment is a valid and, indeed, primary objective of the police power. *Huron Portland Cement Co.* v. *Detroit*, 362 U.S. 440, 442 (1959). Accordingly, it would seem that there is no question that extending the lifespan of existing landfills and thereby preserving further acreage from use as disposal sites is likewise a legitimate and valid exercise of the police power of the State subject to the general rule stated in *Huron Portland Cement Co.* v. *Detroit.*

With appropriate evenhandedly applied standards for treatment and disposal of solid waste, New Jersey landfills could last much longer. Congress, in effect, has recognized the importance of evenhandedness by providing that the EPA administrator shall encourage the enactment of improved and, so far as practicable, uniform state and local laws governing solid waste disposal. (42 U.S.C. Sec. 3254) The Court has addressed this issue saying "... a state may not impose a burden which materially affects interstate commerce in any area where uniformity of regulation is necessary." (*Huron Portland Cement Co.* v. *City of Detroit* et al., 362 U.S. 440, 443 (1959)). In any case, with reference to the question of landfill life, one estimate is that a statewide probitition on solid waste originating elsewhere would only lengthen the statewide landfill life by approximately 8%. (*Hackensack Meadowlands Commission* v. *Municipal Authority,* 8 ERG 1447, 1450). Rather than imposing a ban on solid waste originating from out of state, New Jersey should focus

more sharply on the problem of the entire intra-state and inter-state solid waste load on the Jersey landfill sites and the implications thereof. It appears to be a more critical situation for the state of New Jersey than for its neighbors because of the much higher population density of New Jersey as compared with the states of Pennsylvania and New York. By looking at the solid waste problem in its totality New Jersey could improve on its own situation substantially, in an evenhanded, non-discriminatory manner as to any burden on interstate commerce. At the same time the door would be kept open to cooperative areawide solutions, as encouraged in the Federal Solid Waste Disposal Act of 1965 (42 U.S.C. Sec. 3254). Barring this approach the states in the region might soon reach the position where there would be no feasible alternative except a Congressionally legislated Federal solution. Development of orderly interstate urban solid waste management programs should be fostered, rather than narrow, parochial attitudes. A state of relatively high population density (New Jersey) and a state of low density (Pennsylvania or New York) should have equal potential in the long term for the solution of solid waste problems in an efficient and effective way. This means that possibilities for regional and interstate solutions should not be ruled out.

So, even should the balancing test be deemed appropriate, any benefits which might accrue to new Jersey would be short term at best and more illusory than real. On the other side of the scale, the precedent effect on interstate commerce, as related to the entire environmental area as well as to energy matters, could be quite profound. The scales accordingly would not seem to tip in favor of upholding the New Jersey legislation.

III. The Federal Preemptive Issue: [3]

It is well established that a state may, in the exercise of its police power, enact legislation, even though it may effect interstate commerce, provided that the Federal Government has not preempted the field. *Cooley* v. *Board of Wardens* (53 U.S. (12 How.) 299, 319 (1851)).

Preemption occurs when a state statute obstructs the "accomplishments and execution of the full purposes and objectives of an Act of Congress." *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941). Congressional design to occupy the field is not necessarily required. Preemption also occurs in the case of an actual conflict between federal and state statutes where both cannot stand and state regulation need be nullified. *Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 141 (1963).

Expressed Federal Policy favors "the state's exercise of its own authority over the environment." (*American Can Company* v. *Oregon Liquor Control Commission*, 2 ELR 20642, 20645) This Federal Policy can be detected in the Environmental Quality Improvement Act of 1970 (42 U.S.C. Sec. 4371), the Federal Water Pollution Control Act (33 U.S.C. Sec. 1151(b) (1970) and in the Federal solid Waste Disposal Act of 1965 (42 U.S.C. Sec. 3251 (1970). The policy, however, cannot be construed to mean uni-

[3] U.S. Constitution Article VI, Clause 2 "This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

lateral state action by each state, in isolation from neighboring states, as can be seen from a further reading of the statutes.

More specifically the legislative history of the Solid Waste Disposal Act of 1965, P.L. 89-272 states that "Federal financial assistance is needed to encourage and help States and interstate agencies to undertake surveys of solid waste disposal practices and to develop solid waste disposal plans on a statewide or interstate basis. It is evident that statutory provisions establishing a national program to meet and accomplish these objectives for improved solid waste handling must include the following basic elements: . . . provision must be made for interstate and interlocal cooperation in the establishment and conduct of solid waste disposal programs." (1965 U.S. Code Cong. and Adm. News p. 3608, 3615).

The Solid Waste Disposal Act of 1965 recognized the problem of solid waste management as a national problem and extended the federal reach into an area of formerly exclusively local control. (42 U.S.C. Sec. 3251-59 1970). The Act prescribes that "while the collection and disposal of solid wastes should continue to be primarily the function of State, regional and local agencies, the problems of waste disposal . . . have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership . . . to provide for proper and economical solid-waste disposal practices." (42 U.S.C. 3251) . . . "In addition, the Administrator shall encourage cooperative activities by the States and local governments in connection with solid-waste disposal programs; (and) encourage, where practicable,

interstate, interlocal and regional solid waste disposal programs. (42 U.S.C. 3254).

Likewise, in closely related legislation, the Federal Water Pollution Control Act 33 U.S.C. 1154, it is stated "that the Administrator shall encourage cooperative activities by the States for the prevention and control of water pollution; encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution; and encourage compacts between States for the prevention and control of water pollution." (33 U.S.C. 1154).

Further the Environmental Quality Improvement Act of 1970 states: "(1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation and economic and regional development.

(2) The primary responsibility for implementing this policy rests with State and local governments.

(3) The Federal Government encourages and supports implementation of this policy through appropriate regional organizations established under existing law." (42 U.S.C. 4371(b)).

As a practical matter cooperation is particularly needed in the field of solid waste management during a period when federal limits on air and water pollution serve to add to the waste burden of land. At this time, for example, Philadephia is being turned away from disposal of solid waste at sea, disposal upon naturally

toxic soil formations in Pennsylvania because of obdurate local opposition and Pennsylvania law, and incineration because of cost and air pollution laws. Federal Water Pollution Control Act as amended in 1972 (33 U.S.C.A. Secs. 1314-15, 1317, Suppl.); 1973 Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C.A. Sec. 1411 Suppl.); Clean Air Act (42 U.S.C.A. Sec. 1857 c-4, (1970), and Pennsylvania Solid Waste Management Act 1968 July 31 P.L. 788, No. 241, as amended by Commonwealth of Pennsylvania Act 337 of 1974, 35 Purdons Statutes 6001 et seq.

The cooperative approach appears to be in line with the Court's own view, "that the proper approach is to reconcile the operation of both statutory schemes with one another rather than holding one completely ousted." (*Merrill, Lynch, Pierce, Fenner and Smith, Inc.*, v. *Ware*, 414 U.S. 117, 127 (1973). On this basis the New Jersey Act is hardly consistent with either Federal policy or that of this Court, in its flat prohibition against the importation of solid waste and its insensitivity to the interrelationship between statutes adopted by the separate, yet coordinate, Federal and state sovereignties.

In connection with the foregoing problems relating to traditional approaches to solid waste disposal it should be noted that the prospects for long-run progress for recycling and recovery are promising in view of the basic economic pressures associated with the costs of virgin materials, energy and land. Further improved recovery technology will continue to provide an attractive alternative to traditional disposal methods. (The Sixth Annual Report of the Council

on Environment Quality, December 1975, U.S. Government Printing Office p. 94) In *Hackensack Meadow. D. Commission* v. *Municipal San. L.A.*, 316 A.2d 711, 716, the court observes that "refuse may be utilized for construction, landfill, recycling of paper, bottles and metal, and production of electricity. In passing, it might be noted that *some successful* incineration systems which create waste heat for power generation exist in Germany, the Netherlands, France and Switzerland."

Congress has declared that "it is the continuing policy of the Federal Government, in cooperation with State and local governments, . . . to use all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans . . . (I)t is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—. . .

—obtain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences,

—enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources." (42 U.S.C. 4331)

Application of the doctrine of preemption in this case would work to make possible the promoting of cooperation as between states and the federal government

and the doctrine, it is suggested, should play an important role in shaping the decision of this Court.

CONCLUSION

For the foregoing reasons, this Court should rule that the import ban imposed by the New Jersey Waste Control Act is unconstitutional.

Respectfully submitted,

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